

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

a

SILENTOE K. FOSTER

DOCKET NO. 15-CV-2607

VERSUS

JUDGE DRELL

UNITED STATES POSTAL SERVICE

MAGISTRATE JUDGE PEREZ-MONTES

REPORT AND RECOMMENDATION

Pro se Plaintiff Silento K. Foster filed the instant civil rights complaint pursuant to 42 U.S.C. §1983 and *in forma pauperis* on October 28, 2015. Plaintiff complains of an assault by a postal service worker.

This matter has been referred to the undersigned for initial review. [Doc. #8]

Factual Allegations

Plaintiff alleges that, on October 21 or 22, 2015, he woke to someone "probing" him. He claims that the man went through Plaintiff's "membrane and altered [Plaintiff's] head." [Doc. #1, p.2] Plaintiff claims that the man closely monitored him with governmental powers and altered Plaintiff's body in several ways. Plaintiff alleges that he informed the man that he did not want to be monitored. [Doc. #1, p.3]

Law and Application

A district court must dismiss a complaint filed *in forma pauperis* any time after the court determines that the action is "frivolous." 28 U.S.C. §1915(e)(2)(B)(i)(2006); Walp v. Scott, 115 F.3d 308, 309 (5th Cir. 1997). District courts can make such a

determination *sua sponte*. See Jones v. Bock, 549 U.S. 199, 214 (2007). While some subsections of §1915 refer only to prisoners, the §1915(e)(2)(B) standard for dismissing a frivolous complaint applies equally to prisoners and non-prisoners. See Newsome v. EEOC, 301 F.3d 227, 231-33 (5th Cir. 2002) (upholding dismissal based on §1915(e)(2)(B) in a non-prisoner case).

A complaint "is frivolous where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). "A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory, such as if the complaint alleges the violation of a legal interest which clearly does not exist." Harper v. Showers, 174 F.3d 716, 718 (5th Cir. 1999). A complaint lacks an arguable basis in fact when "the facts alleged are clearly baseless, a category encompassing allegations that are fanciful, fantastic, and delusional." Denton v. Hernandez, 504 U.S. 25, 33 (1992) (citations and quotations omitted); see also Samford v. Dretke, 562 F.3d 674, 678 (5th Cir. 2009) (repeating the "fantastic" and "delusional" criteria). "A finding of factual frivolousness is appropriate when the facts alleged rise to the level of irrational or wholly incredible, whether or not there are judicially noticeable facts available to contradict them." Denton, 504 U.S. at 33; see also Neitzke, 490 U.S. at 327 (describing the "unusual power to pierce the veil of the complaint's factual allegations" afforded under §1915).

Plaintiff's complaint is factually frivolous. It is "delusional," "fanciful," "irrational," and "wholly incredible." Accordingly, dismissal with prejudice is appropriate. See Graves v. Hampton, 1 F.3d 315, 319 (5th Cir. 1993) (describing situations in which dismissal with prejudice is appropriate).

Conclusion

For the foregoing reasons, **IT IS RECOMMENDED** that Plaintiff's complaint be **DENIED** and **DISMISSED WITH PREJUDICE** as frivolous pursuant to 28 U.S.C. §1915(e)(2)(B).

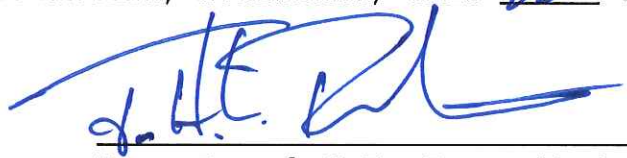
Objections

Under the provisions of 28 U.S.C. §636(b)(1)(c) and Fed.R.Civ.P. 72(b), the parties have fourteen (14) calendar days from service of this Report and Recommendation to file specific, written objections with the clerk of court. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. No other briefs or responses (such as supplemental objections, reply briefs etc.) may be filed. Providing a courtesy copy of the objection to the magistrate judge is neither required nor encouraged. Timely objections will be considered by the district judge before he makes his final ruling.

FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN FOURTEEN (14) CALENDAR DAYS FROM THE DATE OF ITS SERVICE SHALL BAR

AN AGGRIEVED PARTY, EXCEPT UPON GROUNDS OF PLAIN ERROR, FROM
ATTACKING ON APPEAL THE FACTUAL FINDINGS AND LEGAL CONCLUSIONS
ACCEPTED BY THE DISTRICT JUDGE TO WHICH THE PARTY DID NOT OBJECT.

THUS DONE AND SIGNED at Alexandria, Louisiana, this 22nd day
of December, 2015.



Hon. Joseph H.L. Perez-Montes
United States Magistrate Judge